85-1447

No. 85-(3)

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1985

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CABRIOLET PORSCHE + AUDI, INC.,
*Petitioner,*

v.

AMERICAN HONDA MOTOR CO., INC.,
*Respondent.*

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## ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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## RESPONDENT'S BRIEF IN OPPOSITION

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LYON & LYON
A Partnership Including
Roland N. Smoot
A Professional Corporation
611 W. Sixth St., 34th Floor
Los Angeles, CA 90017
(213) 489-1600
*Counsel of Record*

*Attorney for American Honda Motor Co., Inc.*

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BRIEF OF
AMERICAN HONDA MOTOR COMPANY, INC.*
IN OPPOSITION TO PETITION FOR CERTIORARI

Petitioner, Cabriolet Porsche Audi, Inc., has asked this Court to review a judgment of the Eleventh Circuit Court of Appeals vacating an award to it of approximately five million dollars. It has presented as questions for review propositions which, while perhaps appealingly phrased, have little relation to either the impact of the Eleventh Circuit's judgment on automobile dealers or the actual nature of that Court's review of the district court's findings. Further, those questions present to this Court no issue which, under Rule 17 of the Court's Rules, are considerations which govern review on certiorari.

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* American Honda is a wholly owned subsidiary of Honda Motor Co., Ltd. and is partial owner of Honda of America Mfg., Inc.

## STATEMENT OF THE CASE

There is little in Petitioner's Statement of the Case that reflects the record made in the trial court. It is, however, unnecessary to turn to that record or to rebut the rhetoric upon which the assertions of error are predicated. It is sufficient to note that this was, indeed, as set forth in Cabriolet's petition, an action by an automobile dealer against a distributor in the United States of automobiles made by Honda Motor Company, Inc. The gravamen of that action, as noted by Judge Hill, writing for the Circuit Court, was Cabriolet's claim that American Honda's failure to give it all the cars it requested amounted to breaches of the agreement between dealer and distributor and violations of state and federal law. (Petitioner's Appendix, p. 16.)

The case was tried before Judge Hastings in March 1984 and on July 31, 1984, he entered judgment awarding to Cabriolet $4,760,645.00 plus an undetermined amount of attorney's fees. That judgment was predicated on findings of fact prepared by Cabriolet's counsel. In its petition (p. 7), Cabriolet represents to this Court that " . . . . the district court significantly revised the dealer's proposed findings and conclusions and adopted them as its own." Cabriolet is being less than candid. As Judge Hill noted:

> "It is clear that the district court judge adopted virtually verbatim the proposed findings of fact and conclusions of law tendered by appellee/defendant [sic]."[1/] (Appendix, p. 3.)

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1/ Judge Hill, as the opinion makes clear, meant to say "appellee/plaintiff".

Despite the parentage of the findings of fact, and consistent with the standards set forth in Anderson v. City of Bessemer City, 53 U.S.L.W. 4314, 105 S.Ct. 1504, 84 L.Ed.2d 518 (1985), the Circuit Court based its judgment on its "review of the court's findings and legal conclusions against the record and the case and statutory law, which reveals many of the relevant findings to be clearly erroneous and the legal conclusions to be incorrect." (Appendix, p. 3, fn. 2.)

Cabriolet bottoms its petition on nothing more than the argument that a Court of Appeals is bound, under Rule 52 of the Federal Rules of Civil Procedure, by the findings of the trial court "based upon conflicting testimony." (Petn., p. 45.) Indeed, it asserts that it has found no decision in which a Court of Appeals "had ruled that determinations made by a district

court based upon (such) conflicting testimony were clearly erroneous . . . ." (Petn., p. 45.) We frankly do not know to what Cabriolet refers.

If it believes that this is the first appellate decision wherein a judgment based on a finding of coercion or bad faith under the Dealers' Day in Court Act, 15 U.S.C. Sections 1221 et seq., was reversed, it errs as a matter of fact. We refer Cabriolet to such cases as Garvin v. American Motor Sales Corp., 318 F.2d 518 (3d Cir. 1963), Globe Motors, Inc. v. Studebaker-Packard Corp., 328 F.2d 645 (3d Cir. 1964), and Autohaus Brugger, Inc. v. Saab Motors, Inc., 567 F.2d 901 (9th Cir.) cert. denied 436 U.S. 946 (1978), the last being cited by Cabriolet in its petition. In each, a judgment entered

in favor of an auto dealer under that Act, based on such findings, was reversed. In Globe, particularly, the Court of Appeals noted the "sharp conflict in the testimony as to the nature of the incidents and the circumstances surrounding them" (328 F.2d at 648).

If it believes that an appellate court must, under Rule 52, sustain a finding of a district court if there is any evidence to support that finding, it errs as a matter of law. As this Court said in United States v. United States Gypsum Co., 333 U.S. 364, 395, 68 S.Ct. 525, 542, 92 L.Ed. 746 (1948):

> " . . . a finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." (Our emphasis)

The Court of Appeals here reversed the district court because it found the material factual findings upon which the judgment was based were clearly erroneous when tested by the standards required by Anderson v. City of Bessemer City, supra. (See Appendix, pps. 19-22, 40.) Further, the Court of Appeals' construction of the Dealers' Day in Court Act is consistent with all the authorities of which we have knowledge and Cabriolet has cited no Florida decision construing the Florida statutes involved in a manner inconsistent with that here applied. This petition, therefore, presents to this Court no conflict of decisions, state or federal, and no actual departure from the accepted or usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

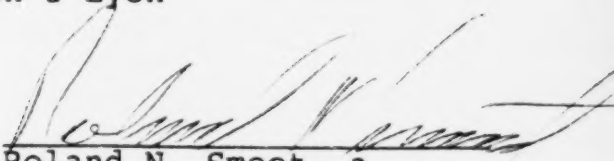
Neither does that decision raise an important question of federal, or indeed state, law which has not been, but should be, settled by this Court. Cabriolet is only dissatisfied that the substantial judgment it obtained from Judge Hastings was vacated on appeal. Its rhetoric to the contrary notwithstanding, the judgment of the appellate court affects only the parties to that judgment and makes no change either in the manner in which the Dealers' Day in Court Act has been construed since its enactment or in the standard of review under Rule 52.

We urge that the Court of Appeals did nothing more than exercise its appellate function in determining that Cabriolet's judgment was improvidently entered. We are content to rely upon its opinion as American

Honda's best advocate in opposing this petition.

Respectfully submitted,

Lyon & Lyon

By 

Roland N. Smoot, a
professional corporation
Attorneys for Respondent

AFFIDAVIT OF SERVICE

On March 28, 1986, I served the foregoing document described as Respondent's Brief in Opposition to Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit on Paul Marcus, Esq. by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully paid in the United States mail at Los Angeles, California, addressed as follows:

9200 South Dadeland Boulevard
Suite 520
Miami, Florida 33156

I declare under penalty of perjury that the above is true and correct.

Ramsey Al-Salam

Ramsey M. Al-Salam